

****NOT FOR PRINTED PUBLICATION****

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

HOLLIE CLARK,

Plaintiff,

v.

WRIGHT BUICK PONTIAC GMC d/b/a
PAKT, LTD.

Defendants.

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CIVIL ACTION No. 9-11-CV-12

JUDGE RON CLARK

**ORDER ADOPTING REPORT AND RECOMMENDATION OF UNITED STATES
MAGISTRATE JUDGE**

The Report and Recommendation of the Magistrate Judge, which contains her findings, conclusions, and recommendation for the disposition of this case has been presented for consideration. The Report and Recommendation recommends that Defendant's Motion for Summary Judgment [Doc. # 24] be granted and that the complaint be dismissed with prejudice. Plaintiff filed written objections to the Report and Recommendation on April 13, 2012.

Having made a de novo review of the written objections filed by Plaintiff, the Court finds that the findings and conclusions of the Magistrate Judge are correct, and the objections are without merit. The objections merely restate the arguments made in Plaintiff's response to Defendant's motion for summary judgment [Doc. # 28] and were already addressed by the Magistrate Judge in her Report and Recommendation. Even if the court assumes for purposes of Plaintiff's argument that she was employed by Defendant or that Defendant refused to hire her,

Plaintiff has not introduced any competent summary judgment evidence on the ultimate issue of discrimination.¹

In light of the foregoing, the court approves the Report and Recommendation of the Magistrate Judge and adopts it as the Court's opinion therein. It is hereby **ORDERED** that the Defendant's Motion for Summary Judgment [Doc. # 24] is **GRANTED** and the complaint is **DISMISSED** with prejudice. Any motion not previously ruled on including Defendant's motion for leave to file an amended answer [Doc. # 37] is **DENIED** as moot.

So **ORDERED** and **SIGNED** this **30** day of **April, 2012**.



Ron Clark, United States District Judge

¹Plaintiff offers the following facts to support her charge of discrimination: (1) that the new owner, Paul Wright, was aware of her pregnancy because it was announced during a meeting; (2) Plaintiff was dressed in maternity blue jeans, and Wright instructed her that she could not wear this "uniform"; and (3) "virtually all of the other employees were retained/hired and the one person let go had a personality conflict with Owner Wright and was fired before the meeting. [Doc. # 33 at 5]. None of these facts establishes a prima facie case of intentional discrimination. Although Plaintiff can prove intentional discrimination if she shows that she was treated less favorably than other similarly situated employees outside her protected group, for employees to be "similarly situated" those employee's circumstances must have been "nearly identical" *See Lee v. Kansas City S. Ry Co.*, 574 F.3d 253, 259 (5th Cir. 2009). Plaintiff's general statement that virtually all other persons were retained or hired does not in any way suggest that the other employees had the same job, responsibilities, or qualifications or even that they were not also pregnant.